

The “Walls of Secrecy and Silence” Shielding Doping in Elite Sports

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In an article published in 2010 in *Criminology and Public Policy*, Henk van de Bunt (2010) magisterially showed how “walls of secrecy and silence” had long prevented the disclosure of two major corporate scandals: Bernie Madoff’s \$50 billion Ponzi scheme, which blew up in 2008, and a cartel involving all the major Dutch construction companies and operating from the mid-1990s until 2002. Henk showed that these two major cases of corporate crime could long go on unchecked not only because of failing supervision but also because of “the successful concealment of illegal activities by the perpetrators and the presence of silence in the social environment” (van de Bunt, 2010: 438). Drawing on Simmel’s (1950) famous article on secret societies, Henk specifically argued that extensive, illegal activities in contemporary legitimate markets can remain secret due to one or more of the following factors: the “above suspicion” (ibid.: 441) status of their perpetrators, the “absence of interest in disclosing the truth” (ibid.: 443), perpetrators’, bystanders’ and supervisors’ “inaction in the face of knowing” (ibid.: 444), their “concerted ignorance” (ibid.: 445) as well as their “fear of the consequences of disclosure” (ibid.: 443).

These mechanisms have most likely also been at work in subsequent corporate scandals—for example, those that are currently shaking Volkswagen and much of the European car industry (e.g., Fromm et al., 2017; Nussbaum and Sebag, 2017). In the rest of this contribution, I will show how they have long been effective in hiding, promoting and legitimizing the use and supply of doping products in elite sports.

I define doping products as a combination of doping substances and doping methods that have been prohibited under sporting rules since the 1960s (for example, Waddington and Smith, 2009) and are now included in the World Anti-Doping Code of the World Anti-Doping Agency,¹ which entered into force in 2004 (see WADA, 2015).² Athletes use doping substances – ranging from anabolic steroids to stimulants and from erythropoietin (EPO) to growth hormones – to enhance their performance or evade detection. Some of these substances are also used by non-competitive sportspeople for broader lifestyle or psychoactive purposes, such as growing muscle, reducing fat, or boosting aggressiveness, and are also known as performance and image-enhancing drugs (for example, Graham et al., 2009). Doping products also include performance-enhancing methods, such as blood transfusions. In addition to being prohibited by the WADA Code, the trade and distribution of doping products are nowadays subject to state restrictions and prohibitions in most European countries, the United States, and elsewhere (Houlihan and Garcia, 2012). Some of these countries go even as far to prohibit the use of such products at least in elite sports (e.g., Paoli and Donati, 2014).

¹ For a formal definition of doping, see WADA, 2015.

² As governments cannot be legally bound by a non-governmental document such as the World Anti-Doping Code, they have implemented it by individually ratifying the UNESCO International Convention against Doping in Sport, the first global international treaty against doping in sport, which was adopted in 2005 and came into force in early 2007.

To develop my argument, I will use evidence from three recent research projects of mine in Italy, Belgium, France and Germany in addition to briefly referring to past and recent scandals and investigations concerning other countries (e.g., McLaren, 2016a and b).

The chapter is structured as follows. In the first section, I present my data sources. In the second and third, along the lines of Henk's analysis, I discuss that the "above suspicion" status of the "perpetrators" of doping products as well as the perpetrators', bystanders' and supervisors' "concerted ignorance," "inaction in the face of knowing" and "fear of the consequences of disclosure" (Van de Bunt, 2010: 441-445). In the fourth section, I consider a further element that has enhanced the "walls of secrecy and silence" (ibid.) long surrounding doping practices: the ambiguous legal status of such practices and the products involved. Some concluding remarks follow.

1. Data sources

To develop my argument, I have primarily relied on the findings of three recent projects.

The first project is an empirical study of supply and demand of doping products in Italy that I conducted a few years ago with Alessandro Donati on behalf of the World Anti-Doping Agency (Paoli and Donati, 2014). Much of the data of that study was collected in close collaboration with the Carabinieri Command for Health Protection. This unit is still known – and will be referred to here – by the acronym NAS from its original name, Nuclei Anti-Sofisticazione. In that project, our first source was the "NAS Investigations Database," which includes summary data for the 80 major anti-doping investigations conducted by NAS between 1999 and 2009. These investigations represent the vast majority of the anti-doping criminal investigations and the related criminal proceedings initiated in Italy in those years. The second source is a set of official documents related to 46 different criminal investigations, 36 of which were carried out by NAS and were thus included in the NAS Investigation Database and 10 of which were conducted by other police forces and were thus new. The third source is a set of interviews with 26 NAS officers, seven prosecutors, one policymaker, and one other expert on anti-doping testing. Donati and I also worked with various other published and unpublished materials. In particular, we conducted an extensive review of the three main Italian news agencies' – *Ansa*, *Agi*, and *Adnkronos* – doping-related media reports for the period January 1998 through February 2012.

I have conducted the second project, entitled "Doping and its Supply: Exploring the Market and Assessing the Impact of Anti-doping Policies in Belgian and French Cycling" together with Bertrand Fincoeur (e.g., Fincoeur, 2016; Fincoeur and Paoli, 2014). As the title indicates, the project tackles the supply of doping products in Belgium and France's national sport, i.e., cycling. Specifically, it was intended: a) to empirically investigate the supply of doping products; b) to reconstruct the implementation of anti-doping policies and specifically supply-side interventions and to assess their impact. The data collection included the analysis of policy documents, criminal proceedings and teams' websites and other documents, 77 interviews with different policy-makers, law enforcement officers and stakeholders and survey of 2,776 competitive Flemish riders, who returned 767 valid questionnaires.

The third project is not a classical research project but consists of my chairmanship of, and my investigative work for, the Evaluierungskommission Freiburger Sportmedizin (hereinafter Commission). The Commission was established in 2007 by the University of Freiburg after the Belgian soigneur Jef D'Hont revealed that the Team Telekom/T-Mobile cycling team (of which two Tour de France winners, Bjarne Riis and Jan Ullrich, were members) systematically used EPO and other doping products and that Freiburg University sport physicians had since 1992 been involved in, and partially even coordinated, these doping practices. The Commission was composed of eight German

and foreign renowned scientists; I became its chair in 2010. The Commission's main task was to evaluate the activities of the Freiburg University Sport Medicine, including its alleged involvement in doping practices since the 1950s. Over the years, it heard more than 100 witnesses, including (former) athletes, sport physicians, sport and university officials, law enforcement officers and policy-makers. It also collected and analyzed over 30,000 pages of documentation from more than twelve different local and national archives. Five of the Commission's reports have already been published by the University of Freiburg. The reports total more than 1,500 pages (see Albert-Ludwigs-Universität Freiburg, 2017).

2. The “above suspicion” status of the perpetrators

As in the cases studied by Henk, the perpetrators of doping practices, too, are mostly “above suspicion.” In both Italy and Germany doping products have long been provided to elite athletes by physicians, in many cases, university physicians.

The father of Italian “doping physicians” is undoubtedly Prof. Francesco Conconi, a professor of biochemistry at the University of Ferrara since 1967, long-time head of its Centro di Studi Biomedici applicati allo Sport and rector of the same university from 1998 to 2004.³ In the late 1970s, Conconi started providing a variety of doping products to Italian elite athletes, primarily in track and field, cycling, swimming, pentathlon, rowing and ski sports, with the tacit support of CONI, the Italian Olympic Committee (see below). By the early 1990s, Conconi also started to provide systematically his services to elite riders working in private teams, treating a large number of “stars,” such as Marco Pantani, Claudio Chiappucci and Gianni Bugno, at the same time as he was a member of the Medical Committee of the International Olympic Committee (IOC), the President of the Medical Commission of the Unione Cycliste Internationale (UCI) and received large amounts of funding from the IOC—supposedly to develop an EPO test, which he never delivered. At the end of that decade, the Ferrara Prosecutor's Office indicted Conconi and two of his assistants of the crime of sporting fraud. Despite “the seriousness and convergence of all the evidence” (Tribunale di Ferrara, 2003: 46), however, the inefficiency of the Italy judicial system and the defendants' procedural tactics (e.g., Toti, 2003) left the Ferrara judge no other choice but to dismiss the case in 2003 due to the statute of limitations.

In Germany, Conconi's pendant was represented by Profs. Armin Klümper and Joseph Keul, two former top sports doctors of the University of Freiburg Sport Medicine Department, which in the 1970s and 1980s treated up to 80-90% of the West German elite athletes. Thanks to the Commission's work, it has become clear that the Freiburg sport physicians were long in charge of making—with all means, including the use of harmful doping products—West German athletes “competitive” vis-à-vis those from East Germany and other nations of the former Soviet bloc which had organized a centralized system of “state doping” (Singler and Treutlein, 2015; Strepenick, 2015; Berendonk, 1992; Spitzer, 2013).

Documents revealed by the Commission show that Armin Klümper, the once world-famous ‘Doc’, for four decades ago systematically provided the German Cycling Federation, i.e. an entire sports federation, with anabolic steroids – possibly including youth and junior teams. These documents also show that the Freiburg doctors have doped not only cyclists, but also track and field athletes, soccer players, wrestlers, canoeists – and many other athletes in Olympic sports disciplines (e.g., Strepenick, 2015). Despite being for more than a decade the senior Olympic doctor of the Federal Republic of Germany, Keul tolerated, and probably even encouraged, the treatment of athletes, including female athletes with anabolic steroids despite the proven serious harms of such substances (Singler and

³ See his personal webpage at <http://docente.unife.it/francesco.conconi/curr>.

Treutlein, 2015). Freiburg physicians' doping practices did not end with Germany's Reunification in 1990. The Commission's investigations and the 2007 Team Telekom/T-Mobile scandal that led to the Commission's institution, indicate that doping continued almost uninterrupted in Freiburg until 2007 (Singer, 2015-16).

More generally, the analyses in Italy, France and Belgium indicate that the suppliers of doping products rarely appear to have criminal records (Paoli and Donati, 2014; Fincoeur and Paoli, 2014; Fincoeur, 2016). Even in Italy the evidence does not suggest a major role for organized crime, as most typically construed, in the supply of doping products. The analysis of the Italian criminal proceedings and the expert interviews indicate a very limited involvement of Southern Italian mafia groups in the production and distribution of doping products in Italy. Only one specific type of suppliers is linked to Southern Italian mafia-type organized crime groups: the hijackers who steal doping substances from trucks and are often associated with Neapolitan camorra groups. Members of some camorra groups also play an important role in fixing horse races, which can be achieved by doping horses (see also Paoli and Greenfield, 2017).

Unlike illegal drug traffickers or dealers, the majority of the suppliers of doping products can hide their illegal transactions and their relationships with their "doping partners"—their own suppliers, collaborators, and customers or patients—behind the legitimate roles they play in their businesses, organizations, or professions. The embeddedness of doping-related supply-side activities in legitimate professions, roles, and institutions mostly makes the development of separate illegal enterprises to run these activities unnecessary. This embeddedness is suggestive of white-collar crime (Sutherland, 1983), and the related and partially overlapping concepts of occupational, corporate (Clinard and Quinney, 1973), and organizational crime (Schrager and Short, 1978)—rather than organized crime.

Reflecting this white-collar background, the suppliers of doping products are also rarely reported to use physical violence. The evidence on corruption is mixed, depending partly on how one defines corruption. In none of the countries studies have we found evidence of bribery. We have found, instead, ample evidence of "abuse of public or private office" albeit not necessarily "for personal gain" (OECD, 2008: 22). Particularly in elite sports, different types of suppliers—e.g., physicians, pharmacists, coaches, and sports federation officials—appear to abuse their positions and the athletes' and the latter's parents' trust by prescribing, selling or administering the athletes doping products and convincing them of the necessity and harmlessness of doping products (see also next section). However, these abuses typically do not occur "for personal gain"—or at least not fully so—but in the name of a misconceived public or team good.

3. Perpetrators', bystanders' and supervisors' "concerted ignorance," "inaction" and "fear of the consequences of disclosure"

My three research projects as well as several past and ongoing scandals (see below) document the "protection" long provided by officials and staff members of sport authorities and key sport federations, some of whom were civil servants and even government officials, to doping elite athletes and the latter's suppliers.

This protection is most evident in Italy. There, as Italian criminal investigations and the resulting scandal indicate, the representatives of national sports bodies, including some very high-ranking officials, exercised their roles as "protectors" quite openly until the late 1990s. A fine line might separate individuals from their institutions, but a request filed in October 2000 by the Prosecutor's Office of Ferrara in the proceedings against Conconi provides evidence of high-ranking individual involvement so much so that it might be difficult to argue against institutional complicity. After

reconstructing the relationships between CONI and Conconi since late 1970s, in fact, Prosecutor Soprani came to the conclusion that Conconi had set up a “criminal organization” (article 416 of the Italian criminal Code, CP; Procura della Repubblica di Ferrara, 2000: 42) together with three CONI Presidents—Franco Carraro (CONI President from 1981 to 1986), Arrigo Gattai (CONI President from 1987 to 1994), Mario Pescante (CONI Secretary General from 1981 to 1994 and CONI President from 1995 to 1998)—and the head of the Research and Documentation Section of the CONI School of Sport, Gianfranco Carabelli. This criminal association had allegedly the purpose of distributing drugs in a dangerous way to public health (article 445 CP) and was active throughout the 1980s (*ibid.*; see also Capodacqua, 2000). Pescante and Conconi were regarded as the promoters of the criminal organization. As too much time had elapsed between the alleged activities and the prosecution, Soprani had to dismiss the case but insisted that his request “does not diminish the social and criminal non-value of the activities proved” (Procura della Repubblica di Ferrara, 2000: 56).

In Germany the judicial evidence of government and sports federations’ direct involvement in doping practices is less overwhelming. There too, though, it is clear that federal, regional and local politicians long gave their unofficial, but decisive support to the doping practices of Klümper and Co and that a variety of other public entities, including the Freiburg University leadership and the local prosecutor’s office and courts, only showed benign neglect for such practices and did not properly assume their responsibilities.⁴ For a long time, many West Germany sports officials and politicians were probably even convinced—or at least justified *ex post* their actions with the idea—of operating for a higher national interest. A series of parliamentary hearings and the detailed historical reconstruction of Singler and Treutlein (2010: 202-239) document the attempts of the National Olympic Committee (NOK), the German Sport Federation (DSB), leading sports physicians, such as Keul, and several politicians in the mid-1970s to question and even weaken the IOC’s prohibition of steroids, minimize or deny the harms associated with their use and, in some cases, even to legalize their administration to elite athletes by physicians. The overall aim of these maneuvers was to secure the “equality of chances” of West German athletes versus their East German counterparts, who were very effectively being doped by East German officials (Spitzer, 2013).

The results of these studies thus anticipate what has recently emerged from the scandals surrounding the International Association of Athletics Federations (IAAF; e.g., Independent Commission, 2015) and the Russian state doping program (e.g., McLaren, 2016a and b). Older scandals, moreover, prove that sports authorities and federation officials in other western countries also long regarded doping as a *de facto* legitimate practice or, even if they increasingly had “doubts” about its formal legitimacy, they still supported or tolerated it in the pursuit of the higher goal of sports success. A good case in point here is the 2001 Lahti scandal. A few days before the start of the 2001 Nordic World Championships in Lahti, Finland, the team physician of the Finnish national ski team mistakenly left his bag containing plasma expander, bloody needles and intravenous tubes at a petrol station. A scandal burst when six Finnish skiers tested positive for plasma expander a few days afterwards and the bag was linked to the team physicians and positive tests. Most probably, the athletes had taken EPO, then used plasma expanders to lower their hematocrit levels before the races. A Doping Enquiry Taskforce (2001: 3) set up by the Finnish Ministry of Education to investigate the scandal concluded: “What made the Lahti doping cases serious was not only the large number of perpetrators, six, but also that doping had taken place under the auspices of Finnish Ski Federation

⁴ The Commission’s analyses further show that the internal and external weaknesses in the Freiburg University Sport Medicine’s governance also allowed numerous instances of scientific misconduct and breaches of scientific integrity, such as plagiarism, data manipulation and falsification in scientific activities and publications (e.g., Köppelle, 2014).

coaching.” In 2008, Kari-Pekka Kyrö, the former coach of the Finnish national team and the only person sentenced for the 2001 scandal, finally admitted that “in the 1990s there was a pharmacological program in the Finnish Ski Federation” and that Finnish skiers systematically took EPO, GH and plasma expander (Hahn and Häyrynen, 2008).

The scandal affecting the Austrian Ski Federation that burst at the 2006 Turin Olympic Games also suggests that doping has continued to be tolerated at the highest levels in western countries even in the current century. This federation hired and protected the trainer Walter Mayer, even after he had been suspended by the IOC, allowed the doping of many of its biathlon and cross-country athletes under Mayer’s supervision and even set up two hematological “laboratories” to check the athletes’ blood values at their training location in Austria and at their premises at the Olympic Village in Turin. After these events became public thanks to the intervention of Italy’s law enforcement agencies, the IOC Disciplinary Commission concluded that the whole Austrian Olympic Committee had

breached its obligations under the Olympic Charter, the IOC Code of Ethics and applicable anti-doping regulations ... 1. through its responsibility for the conduct of the Austrian Ski Federation, as well as for the anti-doping rule violations committed by its athletes and support staff at the Torino Olympic Games ...; 2. by failing to prevent Mr. Mayer from participating in the Torino Olympic Games in breach of the IOC’s decision against Mr. Mayer after the “Blood Bag Affair” ... ; and 3. by failing to implement appropriate organisational changes in an attempt to prevent a repeat of the problems experienced in 2002 (IOC, 2007).

The IOC itself did not make a credible effort to implement their own sports rules and anti-doping tests at least until the new century—its mild treatment of Russian athletes at the 2016 Rio Olympics suggests a persistent lack of enthusiasm among senior members of the IOC for an intensive anti-doping program. Even Dick Pound (2011), former IOC vice-president and founding president of WADA, is very critical:

The response to doping in sport, on the part of sports authorities and governments, did not come until long after the phenomenon was recognized as a serious problem in virtually every sport. Years and years and years of endemic doping in cycling passed almost without notice and, when it was noticed, it was denied or passed off as an isolated aberration. The growing use of anabolic steroids, stimulants and other doping methods in other sports were met with institutional denial, individual lies and inconsequential sanctions. Testing was introduced with enormous reluctance and testing programs were normally limited to in-competition tests, in which a positive test was, in effect, failure of an intelligence test as much as a doping test.

It is plausible that the IOC’s longstanding neglect of doping has been driven by its growing concern with commercial issues, since effective controls would expose numerous famous athletes and alienate Olympic corporate sponsors (e.g., Hoberman 2001: 245). This critical view of the IOC is reinforced by persistent allegations of suppressed positive test results at several Olympic Games during the 1980s and, more recently, at the 2008 Olympic Games in Beijing and the 2014 Winter Olympic games in Sochi (Hanstad, Smith and Waddington, 2008: 230; McLaren, 2016a and b; Independent Commission, 2015; Rumsby, 2017).

A quasi-illegal market

In the case of the use and supply of doping products, the “walls of secrecy and silence” are further enhanced by the inherently ambiguous legal status of such products. Most of these, in fact, are also legitimate, well-established pharmaceutical products and therefore cannot be entirely prohibited, as

was done with heroin or cocaine. Because of this ambiguity, a drug may begin its “life” as a legal product at one end of the supply chain and conclude its “life” as an illegal product at the other. Given the lack of harmonization of the relevant criminal law legislation within the EU let alone across more disparate borders, the same supply activities can or are likely to have different legal statuses in different countries. Moreover, in the case of doping, one of the parties to a transaction involving doping products may be ignorant of any illegality or rule-breaking, reflecting the embeddedness of doping exchanges in legitimate social networks and professional activities. This is, for example, the case of a pharmacist who sells a doping product on the basis of a fraudulent or stolen prescription.

For all these reasons, my coauthors and I (e.g., Paoli and Donati, 2014 and Paoli and Greenfield, 2017) have conceptualized the market for doping products as a quasi-illegal market, that is a market in which the legal status of many supply-side doping-related activities varies along the distribution chain and by location.

Concluding remarks

The findings of the three research projects here summarized and the numerous scandals surrounding doping suggest an ongoing process of de-legitimization and criminalization that is investing the use of doping products in elite sports and the related supply. As other forms of corporate crime, doping, too, can be considered an “index of social change” (Nelken, 2007: 758), that is an activity on which social perceptions and legislation are changing but are often not fully synchronized with each other. Discussing the Enron scandal, Nelken makes a few considerations that are also fully applicable to doping in elite sports: “some relevant misbehavior was legally criminal but not widely stigmatized socially, other misconduct was socially disapproved of, but not technically criminal and the line between these was a changing one” (ibid.: 763). In the case of doping in elite sports, the mismatch is further exacerbated by the fact that sports rules are often distinct from government legislation and differ from the latter in their legitimacy and enforcement.

On a more positive note, the analysis suggests that law enforcement can help effectively tear down the “walls of secrecy and silence” surrounding illegal or otherwise prohibited practices. The athletes and their suppliers and protectors within the elite sports worlds are white-collar criminals par excellence and, as other corporate criminals, are therefore sensible to deterrent measures, as they have a lot to lose. And even if the behavior does not change, criminal investigations can at least disclose illegal or otherwise prohibited practices. As criminologists, we are mostly skeptical of the application of criminal law, as we are all too well aware of the many serious harmful, intended and unintended, consequences that often accompany it. Whereas these criticisms are well founded, the present analysis suggests that the enforcement of criminal law also has a positive, if small, role to play.

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